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U.S. Citizenship and Immigration Services

H64

[redacted]

FEB 02 2004

FILE: [redacted] Office: BANGKOK, THAILAND Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Bangkok, Thailand, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Australia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her husband.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen husband. The application was denied accordingly. *See* District Director Decision, dated August 20, 2003.

On appeal, the applicant's husband states that denial of the waiver would cause him extreme hardship as he wishes to return home to the United States.

In support of this assertion, the applicant's husband submits a letter, dated September 15, 2003. The record also contains a letter from counsel, dated August 7, 2003; a letter from a business associate of the applicant's husband including a copy of a subcontractor agreement, dated July 1, 2003; a copy of the contract of deed for land owned by the applicant and her husband; a copy of a facsimile from the Building Services Authority, dated June 23, 2003; a letter from the applicant responding to the facsimile, dated July 1, 2003; a copy of the marital agreement settlement for the applicant's husband and his prior spouse; a letter from a physician regarding the mental health of the applicant's spouse, dated June 18, 2003; a statement of the applicant, dated April 8, 2003 and a letter from the applicant's husband, undated. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien

would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States under the Visa Waiver Pilot Program on November 25, 1999. Although the applicant entered the United States as a visitor, she married her first U.S. citizen in the United States on December 31, 1999. The applicant subsequently divorced her first U.S. citizen husband and departed the United States in October 2001. The applicant accrued unlawful presence from the date on which her lawful stay in the United States ended in July 2000 until she voluntarily departed from the United States in October 2001. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(a)(9)(B)(v) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The BIA noted in *Cervantes-Gonzalez,* that the alien's wife knew that he was in deportation proceedings at the time they were married. The BIA stated that this factor went to the wife's expectations at the time they wed because she was aware she might have to face the decision of parting from her husband or following him to Mexico in the event he was ordered removed from the United States. The BIA found this to undermine the alien's argument that his wife would suffer extreme hardship if he were deported. *Id.*

In the present application, the applicant met her current U.S. citizen husband after her period of authorized stay in the United States had already expired and she was accruing time in unlawful presence. *See* Request for Waiver of Inadmissibility (Form I-601), dated August 7, 2003 at 2. The applicant's current husband departed from the United States with the applicant knowing that at the time, the applicant intended to reside permanently in Australia and with plans that he would do the same. *See* Statement of Sue-Ellen Sandfort, dated April 8, 2003. The AAO notes that at the time the applicant married her current spouse, he knew her U.S. immigration status to be questionable and was aware that she intended to reside in her home country of Australia, undermining the applicant's claim of extreme hardship to her spouse caused by her inadmissibility to the United States.

The applicant's husband contends that residing outside of the United States imposes extreme hardship on him, a United States citizen. *See* Letter from [redacted] dated September 5, 2003. The applicant's husband

states that he is unable to speak with and see his U.S. citizen children from his prior marriage owing to his residence in Australia and he is not able to earn enough income in Australia to financially support his U.S. citizen children, the applicant, her children and himself. The applicant's husband provides a detailed accounting of his financial obligations to emphasize the extreme hardship imposed on him by residing in Australia.

The record does not adequately demonstrate extreme hardship to the applicant's husband if he returns to the United States in order to resume his business and reestablish contact with his U.S. citizen children and extended family. The AAO notes that the applicant's husband, as a U.S. citizen, is not required to remain outside of the United States as a result of denial of the applicant's waiver application. Counsel asserts that the applicant and her husband were separated for a two-month period beginning in January 2002 and found it difficult to be apart. *See* Request for Waiver of Inadmissibility (Form I-601), dated August 7, 2003 at 2. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. Counsel states that the expenses of maintaining two households will burden the applicant's husband if he returns to the United States. *Id.* However, the record demonstrates that the applicant's husband maintains payment on a home in the United States while residing in Australia and therefore, supports two households regardless of his location. *See* Letter from Larry Sandfort, dated September 5, 2003. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant's husband contends that he is suffering emotionally and mentally as a result of the stress of the applicant's immigration situation. *See* Letter from [redacted] dated September 5, 2003. Counsel provides a letter from a physician familiar with the applicant's situation to support this claim. *See* Letter from D[redacted] dated June 18, 2003. The AAO notes that the record does not demonstrate an ongoing relationship between the applicant's husband and the physician providing the letter. The letter included in the record does not indicate a course of treatment for the applicant's husband to counteract the identified symptoms and it does not comment on the progression of his condition. On the contrary, the letter provided by counsel amounts to little more than an articulation of support for the applicant's claim; it certainly does not offer a medical or psychological evaluation of the applicant's husband nor does it establish the credentials of the doctor preparing it.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA) 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the evidence in the record, when considered in its totality reflects that the applicant has failed to establish that her U.S. citizen husband would suffer "extreme hardship" if she were denied a waiver of

inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.